

Labor Responsibility Checklist for Mission Areas, Agencies, and Staff Offices

Pursuant to the President's Executive Orders (EO) 13836 (**Collective Bargaining**), 13837 (**Official Time**), 13839 (**Removal Procedures**), and the Secretary's OneUSDA – Foundational Responsibilities for Labor Relations Memorandum, each USDA Mission Area, Agency, or Staff Office acknowledges its labor relations responsibilities. To that end, _____ is formally designated [Name of POC] to execute the checklist below:

I. Collective Bargaining Agreement (CBA) Preparation

A. Internal - Agency Preparation

1. _____ Reviewed a copy of the relevant collective bargaining agreement (CBA)(s).
2. _____ Established a point of contact for labor relations at the Mission Area, Agency, Office level if a CBA exists within that area.
3. _____ Received 30 calendar days advance notice from the Agency Labor Relations Officer (LRO) regarding contract rollover/contract negotiation and is aware of the **next dates** for reopening the CBA.
4. _____ Provided 30 calendar days advance notice to OGC and OHRM regarding any contract rollover or mid-term negotiation that has been approved by the Under Secretary or designee and is aware of the **next dates** for reopening the CBA.
5. _____ Cognizant of the necessary notice requirements to reopen the CBA.
6. _____ Cognizant of the notification requirements when learning of any union organizing efforts for certification as the exclusive representative.
7. _____ Confirmed the requirements for notification and coordination with USDA LRO have been met.
8. _____ Notified the USDA LRO that contract negotiations are anticipated with a description of all subjects that are expected to be difficult to reach agreement.

9. _____ Recognize the provisions that may be contrary to applicable Departmental directives, may lead to impasse, or present policy concerns.
10. _____ Confirmed the LRO consulted with OGC and OHRM regarding any labor relations matters referenced in the *OneUSDA – Foundational Responsibilities for Labor Relations* memo, and EOs 13836, 13837, 13839.

B. External - OPM Labor Relations Group Reporting Requirements

1. _____ Understand the agency's reporting and consulting responsibilities to the OPM's Labor Relations Group (OLRG). EO 13836, Sec. 3(a)(b) & (d).
2. _____ Appointed an appropriate representative to the OLRG. EO 13836, Sec. 3(c).
3. _____ Appointed an appropriate agency official to ensure the preparation of a report on all operative term CBAs at least one (1) year before their expiration or renewal date, and the recommendation of new or revised CBA language the agency could seek to include in a renegotiated agreement that would better support the objectives of an effective and efficient government. EO 13836, Sec. 1 & 4(a).
4. _____ Ensured senior management and supervisors are participating in the agency's negotiating team. EO 13836, Sec. 4(b).

II. CBA Negotiations

A. Deadlines & Reporting

1. _____ Confirmed that management negotiation team is making best efforts to negotiate ground rules that minimize delay, establishes reasonable time limits for good-faith negotiations, understands to request Federal Mediation and Conciliation Service (FMCS) mediation of disputed issues not resolved within established time limits, and to promptly bring remaining unresolved issues to the Federal Service Impasses Panel (FSIP) for resolution. EO 13836, Sec. 5(a).
2. _____ Confirmed the management negotiating team established a negotiating period of no more than six (6) weeks to achieve ground rules, and a negotiating period of no more than four (4) to six (6) months for a term CBA. EO 13836, Sec. 5(a).

3. _____ Instructed appropriate staff to notify the agency head when negotiation reaches six (6) months, and then monthly thereafter, with an accompanying status report. EO 13836, Sec. 5(b).
4. _____ Explained to the agency head that he/she must notify the President, through OPM, of any negotiations that last longer than nine (9) months, in which FMCS assistance either has not been requested or, if requested, has not resulted in agreement or advancement to FSIP. EO 13836, Sec. 5(b).
5. _____ Directed the management negotiating team that if bargaining is delayed because of a union's failure to negotiate in good faith, the team must consider filing an unfair labor practice (ULP) complaint, or proposing a new agreement and implementing unilaterally if the union does not offer counterproposals in a timely manner. EO 13836, Sec. 5(c).
6. _____ Confirmed the management team has taken necessary steps to eliminate any bargaining approach other than the exchange of written proposals for addressing specific issues in negotiations. EO 13836, Sec. 5(e).
7. _____ Forwarded a copy of the agency's labor agreement, and its effective date, to OPM. See EO 13836, Sec. 8(a).
8. _____ Instructed appropriate staff to submit new term labor agreement and its expiration date to OPM within 30 days of its effective date. EO 13836, Sec. 8(a).
9. _____ Instructed appropriate staff to submit new arbitral awards to OPM within 10 business days of receipt. EO 13836, Sec. 8(a).
10. _____ Designated an appropriate agency official to prepare an annual "official time" report to OPM containing all the information set out in EO 13837, Sections 6(a)(i-v), (b) & (c).
11. _____ Explained to the agency head that should the management negotiation team be unsuccessful in excluding removals for misconduct or unacceptable performance from negotiated grievance procedures, that a notification must be provided to the President, through OPM, within 30 days after the adoption of any collective bargaining agreement that fails to achieve this goal. EO 13839, Sec. 3.

B. Mandatory Proposals & Bargaining Prohibitions

Negotiated Grievance Procedures

1. _____ Instructed the management negotiating team to endeavor to exclude removals for misconduct or unacceptable performance from negotiated grievance procedures, and if an agreement cannot be reached, to request assistance from the FMCS and, if necessary, FSIP. EO 13839, Sec. 3
2. _____ Instructed the management negotiating team not to accept any proposals which would subject assignment of ratings of record or awards of incentive pay to grievance procedures or binding arbitration. EO 13839, Sec. 4(a).
3. _____ Instructed the management negotiating team not to accept any proposals that would: (1) limit the agency's discretion to use Chapter 75 procedures to address unacceptable performance, (2) require the use of Chapter 43 procedures before removing an employee for unacceptable performance, or (3) limit the agency's discretion to remove an employee without first engaging in progressive discipline. EO 13839, Sec. 4(b).
4. _____ Instructed the management negotiating team to propose opportunity periods for demonstrating acceptable performance to no more than 30 days, except when management determines that a longer period is necessary to provide sufficient time to evaluate an employee's performance. EO 13839, Sec. 4 (c).

Official Time

1. _____ Directed the management negotiation team to strive for a negotiated union time rate of one (1) hour or less. EO 13837, Sec. 3(a).
2. _____ Explained to the management negotiating team that if it agrees to authorize a union time rate greater than one (1) hour, the agency head must report this agreement/proposal to the President, through OPM, explaining why such expenditures are reasonable/necessary/in the public interest. EO 13837, Sec. 3(b)(i).
3. _____ Designated a subordinate official to furnish notification to the agency head five (5) business days in advance of presenting/accepting a proposal that would result in a union time rate of greater than one (1) hour for any bargaining unit. EO 13837, Sec. 3(b)(ii).

4. _____ Instructed the management negotiating team not to agree to any union proposal that would allow bargaining unit employees official time to engage in lobbying activities. EO 13837, Sec. 4(a)(i).
5. _____ Instructed the management negotiating team to ensure that any official time proposals will require employees to spend at least 75% of their paid time, each fiscal year, performing agency business or attending necessary training. And if an employee's official time exceeds 25% in a fiscal year; the excess shall count toward subsequent fiscal years. EO 13837, Sec. 4(a)(ii)(3).
6. _____ Instructed the management negotiating team not to agree to any proposal that that would allow the union free or discounted use of government property or agency resources if such free/discounted use is not generally available for non-agency business by employees when acting on behalf of non-federal organizations. EO 13837, Sec. 4(a)(iii).
7. _____ Instructed the management negotiating team not to accept any proposal that would allow employees to be reimbursed for expenses incurred when performing non-agency business. EO 13837, Sec. 4(a)(iv).
8. _____ Instructed management negotiation team not to accept any proposal that would permit bargaining unit employees serving as union officials from using official time to file grievances. EO 13837, Sec. 4(a)(v)(1).

Permissive Bargaining

_____ Instructed the management negotiating team not to negotiate over any of the permissive topics set forth in 5 U.S.C. §7106 (b)(1), or to engage in bargaining on any matter that management is not required to do so, e.g., proposals affecting the working conditions of managers or supervisors, etc. See EO 1836, and *OneUSDA – Foundational Responsibilities for Labor Relations* memo.

C. Procedures for OHRM & OGC Advice, Guidance & Reporting

Arbitrations, Impasses, and ULPs

1. _____ Consulted with USDA LRO concerning pending Arbitrations, Impasses, or Unfair Labor Practices set out in USDA DR 4070-711 (Labor Relations).

2. _____ Before recommending whether to pursue a review of an FLRA decision or an exception to an arbitration award, contacted USDA LRO.

Compelling Need Assertions

1. _____ Submitted request to bargain exceptions for proposals that are inconsistent with Departmental rules or regulations in accordance with the timelines set out in USDA DR 4070-711 (Labor Relations).
2. _____ Submitted requests by memorandum to the USDA LRO describing the reasons for the request for exceptions and containing the language of the specific proposal(s).

Negotiability Appeals

1. _____ Notified USDA LRO of any negotiability appeals filed by a union in response to management's allegation that a bargaining proposal is non-negotiable under the FSLMRS within 3 business days.
2. _____ Submitted copies of all appeal documents to USDA LRO filed by the union, and Federal Labor Relations Authority (FLRA) orders within 3 business days of receipt by management.
3. _____ Consulted with USDA LRO prior to filing statements of positions with the FLRA or response to Union replies.
4. _____ Provided copies to the USDA LRO of all documents served on the FLRA.

Mission Area, Agency and Staff Office management officials shall renegotiate any provisions of existing CBAs that are inconsistent with EO 13836, 13837, 13839, OPM regulation, or any applicable USDA Directive, policy, within the timelines set forth in the applicable regulation, or at the earliest practicable date permitted by law.